however, may be rested on the theory that the parties may not alter the jurisdiction of the courts. It is submitted that there is an essential difference between the waiver of process and the waiver of jurisdiction.[11] The former involves only the rights of the parties; the latter involves the framework of the judiciary. It is well settled that the parties may waive lack of process by a general appearance,[12] but that they cannot waive a court's lack of jurisdiction.[13] Altogether, it can scarcely be regarded as settled that the state cannot require a foreign corporation to assent to a waiver of due process to the extent demanded by the California statute.

Second, if such assent can be required, cannot it be implied from the act of the corporation in entering the state with notice of the statute? Courts answering in the negative assert that the corporation cannot be presumed to have notice of an illegal statute.[14] It is submitted that this rule, even if its validity be granted, is either inapplicable or immaterial, depending on whether an assent to waiver of due process may or may not be required. If the assent may be required, the rule is inapplicable, for the statute is, *ex hypothesi,* not illegal. If the assent may not be required, the rule is immaterial, for the assent, even if expressly given, would be of no effect.[15]

Until the Supreme Court of the United States passes squarely on these statutes, their validity must remain open to question and the process therein provided will not be used by cautious attorneys. A simple legislative solution would be an amendment providing that the Secretary of State shall immediately, and by registered mail, notify the corporation of service at its last address on file with him. In that case, service on the Secretary of State would clearly be sufficient.[16]

P. L. F.

STATUTE OF LIMITATIONS: REMOVAL OF BAR BY PAYMENT OF INTEREST.—The English courts in interpreting Lord Tenterden's Act[1] have determined that it is not necessary that a payment of part of the principal of a debt barred by the Statute of Limitations, or of interest thereon, be evidenced by a writing

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[11] See Ex parte Schollenberger (1877), 96 U. S. 369, 24 L. Ed. 853.

[12] Cal. Code Civ. Proc., § 416; Security Loan Co. v. Boston Fruit Co. (1899), 126 Cal. 418, 58 Pac. 941.

[13] King v. Kutner-Goldstein Co. (1901), 135 Cal. 65, 67 Pac. 10.

[14] King Tonopah Mining Co. v. Lynch (1916), 232 Fed. 485, at p. 491.

[15] Insurance Co. v. Morse (1874), 20 Wall. 445, 22 L. Ed. 365.

[16] Mutual Reserve Ass'n v. Phelps (1903), 190 U. S. 147, 47 L. Ed. 987, 23 Sup. Ct. Rep. 707. See also St. Mary's Petroleum Co. v. West Virginia (1906), 203 U. S. 183, 51 L. Ed. 144, 27 Sup. Ct. Rep. 132, denying writ of error to same case (1905), 58 W. Va. 108, 51 S. E. 865, 1 L. R. A. (N. S.) 558, 112 Am. St. Rep. 951.

[1] 9 Geo. IV c. 14.

in order to remove the bar.[2] The California statute[3] differs from the statutes of England and many of the states in that it does not limit the requirement that an acknowledgment or promise be contained in a writing to an acknowledgment or promise "by words only" and because it omits the proviso that the act is not to "alter or take away or lessen the effect of any payment of any principal or interest."

While the United States Circuit Court interpreting the California statute held that part payment need not be evidenced by writing, distinguishing between a removal of the bar by acknowledgment or promise and by conduct,[4] the Supreme Court of California has decided that the statute was intended to prevent parol proof in cases of conduct as well as of verbal acknowledgment or promise.[5]

Another question which arises under the California statute is whether the effect of a payment is left unchanged and the conduct itself continues to be evidence of the new promise, the statute merely making it essential that the fact of payment be evidenced by a written memorandum, or whether, since the statute makes no reference to an acknowledgment by conduct, all acknowledgments and promises must be in writing. This has not been very clearly discussed in the cases. The case which passes most definitely on the point is Barron v. Kennedy,[6] where it is stated that part payment is "deemed an unequivocal admission of a subsisting contract or liability from which a jury is justified and bound to infer a new promise. The act in California does not make any change in the effect of an acknowledgment or promise but merely alters the mode of proof and is directed principally against the admission of oral acknowledgments and promises. Its chief object was to require that to be evidenced by writing which previously consisted of verbal declarations only." This case seems to be the only one where this precise question was involved; a couple of cases, while stating that the object of the statute was to change the form of evidence, might be taken to indicate, by way of *dictum,* that a written memorandum of payment would not be a compliance with the statute and that there must be a written acknowledgment or promise in all cases.[7]

In the case of *Sherwood v. Lowell*[8] this point was involved.

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[2] Cleave v. Jones (1851), 6 Exch. 573.

[3] Cal. Code Civ. Proc., § 360.

[4] Palmer v. Andrews (1858), McAll. 491.

[5] Fairbanks v. Dawson (1858), 9 Cal. 89, Pena v. Vance (1862), 21 Cal. 142.

[6] (1861), 17 Cal. 574.

[7] Fairbanks v. Dawson, supra, n. 5 (Judge Field, who gave the decision in Barron v. Kennedy, dissenting), Heinlin v. Castro (1863), 22 Cal. 100.

[8] (June 4, 1917), 24 Cal. App. Dec. 961; (July 27, 1917), 25 Cal. App. Dec. 175.

[9] Pierce v. Merrill (1900), 128 Cal. 473, 61 Pac. 67, 79 Am. St. Rep. 56.

In that case, after the note was barred, defendant made a payment of $140 by way of interest to the holder, part of which was paid as interest on the barred debt, and there was the following memorandum: "by interest $140." This writing clearly does not amount to a written acknowledgment of the debt[9] and could only be valid as a memorandum of the fact of the payment of interest. On the original hearing the court seemed to assume without discussion that a memorandum of payment is a sufficient writing, but on rehearing this was one of the grounds of reversal, the court requiring the acknowledgment itself to be in writing, and overruling the distinction suggested in Barron v. Kennedy.

But the distinction seems logical. Before the California statute was adopted a promise to pay the barred debt was inferred from a verbal acknowledgment or from an acknowledgment by the act of part payment. The Code provides that no acknowledgment or promise is sufficient unless contained in some writing. Under this section, the words of a verbal acknowledgment would have to be reduced to writing for such an acknowledgment to be contained in some writing. In the case of a payment, however, since the promise is inferred from the act, a written memorandum of the act would contain the acknowledgment "in some writing" within the meaning of the statute.

E. M. C.

Book Reviews

"JUSTICE THROUGH SIMPLIFIED LEGAL PROCEDURE."—(Annals of the American Academy of Political and Social Sciences. Vol. 73, No. 162). Concord, New Hampshire, 1917. pp. v, 251.

This is an important addition to the growing literature dealing with the reform of judicial procedure and judicial organization. It contains the "Report to the Phi Delta Phi Club of New York City" by its Committee of Nine of which Henry W. Jessup was Chairman, "Observations" upon the report by Charles A. Boston, "The Layman's Demand for Improved Judicial Machinery" by William L. Ransome, "The Working of the New Jersey Short Practice Act" by Martin Conboy, "Progress of the Proposal to Substitute Rules of Court for Common Law Practice" by Thomas W. Shelton, Chairman of the Committee on Uniform Judicial Procedure of the American Bar Association, "An Efficient County Court System" by Herbert Harley, Secretary of the American Judicature Society of Chicago, "A Justice Factory" by Frederick D. Wells, Justice of the New York Municipal Court, "Administration of Business and Discipline by the Courts" by Julius Henry Cohen, "The Organization of the Court" by George W. Alger, and "Looking Forward in the Law" by Andrew Younger Wood, Editor of the San Francisco Recorder.

The names of the contributors and the subjects indicate the